

EXHIBIT M

COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAMES BONOMO,)
) NO.
Plaintiff,) 07 CV 5967
-vs-)
MITSUBISHI INTERNATIONAL)
CORPORATION,)
Defendants.)

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May 13, 2008
9:30 a.m.

Deposition of RICHARD LOVELL,
held at the offices of Liddle &
Robinson, LLP, 800 Third Avenue, New
York, New York, pursuant to Notice and
Agreement, before Hope Menaker, a
Shorthand Reporter and Notary Public of
the State of New York.

A P P E A R A N C E S

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BY: STEPHEN SONNENBERG, ESQ.

ALSO PRESENT:

James Bonomo

Diane Knox, Mitsubishi

International Corporation

Justin Ben-Asher

1 - RICHARD LOVELL -

2 looked at?

3 A. Looks to be, yes.

4 Q. Then after that investigation
5 on the Bonomo complaint, the
6 typewritten document, whose hand -- who
7 prepared that? Do you know?

8 A. That's mine.

9 Q. Okay. So you say, "Attached
10 are the handwritten and typed
11 questions."

12 That's those two documents,
13 correct? That's what you had referred
14 to as an attachment?

15 A. Yes.

16 Q. Now, did you take any notes
17 at all of that first meeting with
18 Mr. Furuichi?

19 A. Yes.

20 Q. What did you do with those?

21 A. I didn't keep the handwritten
22 notes that I had. I had put it into
23 the typewritten and, to me, the
24 typewritten was the working document.

25 Q. Did you make any changes at

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2 all between what you handwrote and what
3 you typed?

4 A. What I handwrote was
5 basically words that I jotted down.
6 They weren't -- there were full
7 sentences here and there but not much.

8 Q. So the process that you used
9 was to take your notes and -- after the
10 meeting was to write it up and try to
11 put it into -- more into full
12 sentences?

13 A. Actually, make a more
14 complete report, right.

15 Q. Did you do anything other
16 than utilize the one word or two words,
17 the notes that you had taken, to
18 refresh your recollection when you were
19 typing it up?

20 A. No, I didn't need to. I did
21 it soon after the interview. Like I
22 said, it was either going to be that
23 night or the next morning.

24 Q. Take a look at Mr. Leffler's
25 notes, several pages, and Bates number

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premarked for identification.)

Q. Exhibit 47, again, I believe to be Mr. Leffler's handwritten notes?

A. Uh-huh.

Q. Have you ever seen those before?

A. No. I have not seen any of notes that you're showing me that he wrote.

Q. His notes did not go into an investigatory file?

A. No.

Q. Did you keep an investigatory file?

A. Yes.

Q. What was contained in your investigatory file?

A. My questions, my typewritten notes, and my final reports.

Q. Now, you were sending a letter, a note, to Mr. Bonomo, telling him to preserve documents?

A. Yes.

Q. And you were destroying your

1 - RICHARD LOVELL -

2 handwritten notes?

3 A. I didn't consider those as
4 documents.

5 Q. Well, what did you think they
6 were?

7 A. Basically, scribble. What I
8 thought was the end product, was the
9 thing that I labeled "Draft Notes."

10 Q. Well, when you say "end
11 product," is it your understanding that
12 the only documents you're supposed to
13 retain are end products?

14 A. Well, from my investigation,
15 I was keeping the notes, not
16 handwritten, the typed notes, the typed
17 questions, the final reports.

18 Q. But you also have drafts that
19 were typewritten, right?

20 A. You've got them.

21 Q. And so the only thing that
22 you didn't keep was any handwritten
23 drafts that is the actual contemporaneous
24 notes that you took during these
25 interviews?

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2 A. Until the final -- until the
3 final interview with Furuichi San, I
4 talked to Diane, and Diane asked if I
5 had any handwritten notes. I told her
6 that I didn't retain them.

7 She said, You should have.

8 The typewritten ones really
9 represent the handwritten.

10 And she said, No. You should
11 have kept it even though they were just
12 scribbled words on a thing.

13 So I said okay.

14 Q. So it was sometime in May of
15 2007 or June of 2007 when you learned
16 for the first time that those were
17 documents that should have been kept?

18 A. It was probably early June.

19 Q. Well, you know that this
20 document "Your Guide to MIC" talks
21 about record retention, right?

22 A. That's correct.

23 Q. Does it say, can you throw
24 away your handwritten notes if you type
25 them up?

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2 the filing system in the human
3 resources department?

4 A. Within HR, but legal is the
5 one that promulgates the record
6 retention.

7 Q. For you?

8 A. Yeah, yes.

9 Q. So if these handwritten notes
10 of Mr. Leffler's had been given to you,
11 would you have destroyed them?

12 A. I wouldn't have needed them.

13 Q. So you would have destroyed
14 them?

15 A. If they were given to me?

16 Q. Yes.

17 A. Yes. I would have asked him
18 why he gave them to me; I don't need
19 them. The reason I circulated the
20 draft copies of the interviews to Fred
21 was so that Fred could decide -- or
22 take a look at it and see whether
23 there's anything omitted or misstated.

24 He never had any comments
25 back on any of the interviews, so from

F18

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2 my perspective, I got everything right.

3 Q. If you take a look at the
4 Exhibit 48 that's in front of you --

5 A. Uh-huh.

6 Q. -- do you know who Yasuchi
7 Suzaki is?

8 A. No.

9 Q. It says here that -- it has
10 on top, "Yue, Ihara, Leffler, Lovell,
11 Knox, translator," and then a circle
12 around the name "Yasuchi Suzaki."

13 A. I think the translator's name
14 was Jin.

15 Q. The translator's name is on
16 here; it says "Raj Jin."

17 A. Right.

18 Q. Right. Okay. That's --
19 Yasushi Suzaki's name is on here too.

20 Do you know who that is?

21 A. No idea.

22 Q. "RL" would be your initials,
23 right?

24 A. Yes.

25 Q. And the person who is writing

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1
2 notes?

3 A. I -- yeah, I reviewed the
4 things that I had written. And I also
5 reviewed the handwritten notes that
6 were retained on the second interview
7 with Furuichi San.

8 Q. So it would have been around
9 this time, that is mid-May, that you
10 had your conversation with Ms. Knox
11 about retaining the handwritten notes?

12 A. I have a feeling it was
13 pushing closer to the end of May.

14 Q. Just -- did you review the
15 your notes on this Takahashi interview?

16 A. The report that I wrote or
17 the what I would call the draft of the
18 interview, yes.

19 Q. Yes. On that you indicate
20 that Mr. Inada was there.

21 A. Okay.

22 Q. So would that then be
23 accurate, that Mr. Inada was there? Do
24 you remember or not remember?

25 A. I don't, because it's -- here

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2 it's accurate, but I don't remember him
3 being there.

4 Q. Whenever you have that kind
5 of a situation in this deposition, that
6 is, where you remember something
7 because you see it and all, you have to
8 differentiate for me between relying on
9 the notes and relying on your memory
10 actually being refreshed.

11 A. Okay.

12 Q. You understand that
13 distinction that you just made for us?

14 A. Sure.

15 Q. Have there been any other
16 situations where you've testified based
17 upon a document because you relied upon
18 the document being accurate, but that
19 you didn't really have your own
20 recollection?

21 A. No, I don't think so.

22 MR. LIDDLE: We'll go until
23 1:00 and then break for lunch.

24 MR. SONNENBERG: Sure.

25 Q. I want to hand you what we've

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2 you finish?

3 A. 25. I think it was 25,
4 right?

5 Q. I don't know. Only you can
6 tell us where you finished.

7 A. Well, 25 and 26.

8 Q. Did you give him 27?

9 A. I had asked him that before,
10 and I think I gave him 27, also, but I
11 don't recall hitting 27 again.

12 Q. You didn't give him any of
13 the sections on the various claims?

14 A. No.

15 Q. Why was that?

16 A. I was interested in what his
17 answers were on the factual allegations.

18 Q. And since you'd already had
19 an interview with him, were there any
20 of these actual allegations that had
21 not been covered?

22 A. Not as pointed. What I did
23 in the second interview is I asked him
24 to do two things: I asked him to --
25 with limited questions, I asked him to

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2 recap what he recalled from his trip to
3 China and walk me through that.

4 And I asked him questions if
5 I needed to, but I wanted to have him
6 just sort of go through it in a story
7 sort of way.

8 And after he had gone through
9 that, I asked him then specific
10 questions surrounding each of these
11 points 10, 11, 12, etc., and I asked
12 him to read it and respond.

13 Q. Now, you had already had an
14 interview with him about his cell
15 phone.

16 Was there some concern you
17 had that you hadn't asked one of these
18 questions or that you didn't believe
19 that his answers were credible,
20 anything of that nature?

21 A. No. For me it was really a
22 double-check, and it was a matter of
23 trying to be thorough with him.

24 Q. And did anyone suggest that
25 you conduct this second interview?

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2 China.

3 Q. Also, after he'd answered the
4 question, What is your understanding of
5 "discrimination"?

6 A. Yeah. My recollection is
7 those were the first questions that I
8 asked him.

9 Q. I'm going to hand you your
10 exhibit -- or Exhibit 62.

11 (Whereupon, Lovell Exhibit 62 was
12 premarked for identification.)

13 Q. I think these are your
14 handwritten notes; is that correct?

15 A. That's correct.

16 Q. So this is the style and
17 format of handwritten notes that you
18 would have prepared or did prepare on
19 prior occasions but which you had
20 destroyed?

21 A. No. These are much more --
22 much more sense in paragraph form, and
23 the others were more words jotted here
24 and there.

25 Q. You were still asking the

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2 questions?

3 A. I was still asking the
4 questions.

5 Q. So in addition to preserving
6 these, you also took these notes in a
7 different style from the ones that have
8 not been preserved; is that your
9 testimony?

10 A. That's correct.

11 Q. Did you have a discussion
12 about that with anybody?

13 A. Not in style, no.

14 Q. So why did you change your
15 style?

16 A. Because if I was going to
17 retain the notes, they should make some
18 sense.

19 Q. Okay. So let's try to take a
20 look at the very first entry here.
21 "Discrimination," that's a word
22 relating to your question; is that
23 right?

24 A. Yeah. These are basically --

25 Q. Let's take it one step at a

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2 Q. Here he says, "Then Chinese
3 dinner, eating and drinking. Not sure
4 about bar, over about midnight."

5 So that's a lot longer than
6 that hour and a half starting at 7:30
7 or so, right?

8 A. Yeah. There were problems
9 with timelines, both with Jim's alleged
10 complaint as well as what Yue thought
11 what timelines were, as well as what he
12 thought timelines were.

13 Q. He said, "then went to the
14 bathhouse as usual"?

15 A. Uh-huh.

16 Q. Is that a yes?

17 A. Yes.

18 Q. And then at this time he says
19 Jim asked to join them; is that right?
20 Jim -- that he told you that Mr. Bonomo
21 wanted to go to the bathhouse with
22 them?

23 A. No. Jim asked to join.
24 That's they asked Jim to join, because
25 if you go down --

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2 Q. This would be Jim, implied in
3 there, was asked as opposed to ask?

4 A. Jim was asked to join and
5 explain -- then they explained what
6 would happen. Jim agreed to go.

7 Q. What did they explain was
8 going to happen?

9 A. Basically, that it's a
10 massage.

11 Q. We've heard these terms
12 "sexual" and "nonsexual" massage.

13 Did that term come up?

14 A. No. Furuichi San doesn't
15 remember using that term.

16 Q. And then he told you that a
17 bathhouse is a very usual place to go;
18 normally they would go there. So
19 that's why he doesn't remember very
20 much about this particular event; is
21 that right?

22 A. I think the --

23 Q. Is that what he's saying
24 right here?

25 A. Where are you?

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2 Q. Here, what you got from
3 Furuichi is that he's not sure; isn't
4 that right?

5 A. No. He ended up saying,
6 because you're going to see another
7 line as you go forward, he began to
8 build hypotheticals around things that
9 could have happened, but when pressed,
10 he basically said that there was no way
11 that those things occurred. He did not
12 recall them.

13 Q. I see. Well, he did not
14 recall -- I think we went through this
15 before -- "did not recall" and "did not
16 happen," in your mind, are two
17 distinctly separate --

18 A. No. I think you asked me
19 about "denied" versus "did not recall."
20 I think if somebody doesn't remember
21 something, and they consistently don't
22 remember, that's it; they don't
23 remember it.

24 Q. Okay. That's not a denial,
25 correct?

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2 A. It's not a denial, but they
3 believe that those things did not
4 occur.

5 Q. Forgive me. I'm losing your
6 reasoning here.

7 If I heard what you just
8 said, you said was that if somebody
9 says "I do not recall" enough times, in
10 your mind, that becomes "I deny it" as
11 opposed to "I just don't remember it";
12 is that correct?

13 A. Yes. Some of the things, he
14 doesn't remember it, but some of it
15 he'll say something to the effect, I
16 don't remember that happening; no, that
17 did not happen.

18 Q. Well, when he says, I may
19 have said you will be the target, how
20 could you possibly deny that?

21 A. Well, when you go further and
22 you look at the side-bar notes that I
23 have, after he had gone through and he
24 had built some hypotheticals around a
25 number of these different questions, I

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2 asked him.

3 And I said, Look, are you
4 remembering things or are these things
5 that did not happen, you don't recall
6 them happening?

7 And his answer is, They did
8 not happen. I don't remember them.

9 Q. Do you know what a leading
10 question is, sir?

11 A. Yes.

12 Q. Do you think that after he
13 had made this answer several times,
14 saying, I don't remember, or it may
15 have happened, or something along those
16 lines, that when you went back and
17 insisted on knowing whether or not it
18 happened or not, that you were
19 suggesting to him what the answer
20 should be?

21 MR. SONNENBERG: Objection as
22 to form.

23 A. I don't think it was leading.
24 I asked him a question and the question
25 was, Do you remember these things or

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2 don't you?

3 Q. Well, he's already said that
4 he doesn't one way or the other.

5 What were you trying to
6 suggest to him by asking the question
7 again?

8 MR. SONNENBERG: Objection as
9 to form.

10 A. I wanted to know whether he
11 was actually starting to remember
12 things or whether these were things
13 that he was trying to imagine that
14 happened or how they could have
15 happened.

16 And as it turned out, he was
17 getting creative in terms of building
18 these hypotheticals, but he did not
19 remember them.

20 Q. I'm going to also hand you
21 Plaintiff's Exhibit 63 while we're at
22 it, Mr. Leffler's notes of this same
23 meeting.

24 (Whereupon, Lovell Exhibit 63 was
25 premarked for identification.)

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2 So that was the one thing
3 that was brought up by both of them as
4 something that could have happened, and
5 so I listed it as something that
6 potentially happened.

7 Q. Were you aware that
8 Mitsubishi International Corporation
9 denied the allegations of Paragraph 18?

10 A. No.

11 Q. Paragraph 19 says, "Mr. Zhibo
12 then used his cell phone to take a
13 picture of Mr. Bonomo's genitals."

14 And Furuichi says, according
15 to your notes, "Does not remember.
16 Mr. Yue may have cell phone. Do not
17 remember. Yue could have taken
18 picture. Prone to act like child."

19 Is that pretty much what
20 Mr. Furuichi told you?

21 A. At that point, yes.

22 Q. Mr. Leffler writes down, "I
23 don't remember if Yue took a picture
24 with cell phone. Chinese do take cell
25 phones every place.

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2 "Concerning Yue's
3 personality, he may have taken a
4 picture. Once Mr. Yue thinks he is
5 friendly with a person, he can be
6 childish. Would not be a surprise, but
7 I really don't recall."

8 Were you aware that
9 Mitsubishi International Corporation
10 took the position in its answer that
11 all of these allegations were denied?

12 A. I'm not aware of it, but I
13 wouldn't disagree with a denial on
14 that, no.

15 Q. It would be more accurate to
16 say that you didn't have knowledge or
17 information sufficient to form a belief
18 as to the truth of this; is that
19 correct?

20 MR. SONNENBERG: Objection as
21 to form. Lacks foundation.

22 A. I had two people being
23 relatively consistent in what they
24 said. And, in fact, I had Furuichi,
25 after I asked him whether he was

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2 remembering or not remembering what had
3 occurred.

4 And he came back and said,
5 Look, there is -- this did not happen.
6 It was not something that they did and
7 my -- barring the fact that I didn't
8 get a chance to talk to Jim and get any
9 information from there, I would have to
10 tend to believe him.

11 Q. Now, you wrote this marginal
12 notation. It says, "on several points
13 above, when pressed, he did not recall
14 at all and was trying to think of what
15 context something may have happened if
16 in fact it did. "

17 You write down,
18 "Paragraphs 12, 16, 19, and 20," right?

19 A. Uh-huh.

20 Q. That's a yes?

21 A. Yes.

22 Q. Would you take a look at
23 Mr. Leffler's notes and tell me if you
24 see any -- anything of that nature in
25 Mr. Leffler's notes?

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2 Q. Mr. Leffler says, "I could
3 have said this or Mr. Yue said this. I
4 do not recall saying something like
5 this, however."

6 That's not "not at all," is
7 it?

8 A. I didn't write Leffler's
9 notes.

10 Q. No, you didn't. But do you
11 think that what I've just read to you
12 from Mr. Leffler's notes makes up that
13 he doesn't recall rather than not at
14 all, and says that Mr. Yue could have
15 said this?

16 MR. SONNENBERG: Objection as
17 to form.

18 A. No. I can only go by what I
19 wrote, and what I wrote is what I
20 recollect, and that's what went in the
21 report.

22 Q. This is one of those things
23 where seeing the document or seeing
24 Mr. Leffler's notes doesn't refresh
25 your recollection. You believe that

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C E R T I F I C A T E
STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

I, HOPE LYNN MENAKER, a Notary
Public Within and for the State of New
York, do hereby certify:

That RICHARD LOVELL, the witness
whose deposition is hereinbefore set
forth, was duly sworn by me and that
such deposition is a true record of the
testimony given by the witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I
am in no way interested in the outcome
of this matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 16th day of
May, 2008.


HOPE LYNN MENAKER